

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|--------------------------------|---|---------------------|
| ERNEST A. CRUMP, JR., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civ. No. 04-329-SLR |
| |) | |
| ROBERT MAY, THOMAS RYGIL, |) | |
| VINCE BIANCA, and STAN TAYLOR, |) | |
| |) | |
| Defendants. |) | |

O R D E R

At Wilmington this 31 day of October, 2005,
defendants having filed a motion to dismiss the complaint and an
accompanying brief on September 12, 2005 (D.I. 21);

IT IS ORDERED that:

1. Because matters outside of the pleadings were
presented to the court in support of said motion to dismiss, the
court will review the motion as one for summary judgment pursuant
to Fed. R. Civ. P. 12(b) and 56(b).

2. Because defendants rely upon an affidavit in
support of their motion, the averments of fact in the affidavit
shall be accepted as true, pursuant to Fed. R. Civ. P. 56(e), for
the purpose of deciding the motion unless plaintiff timely files
a counter-affidavit or statement under penalty of perjury
refuting said averments.

3. Briefing on this motion shall proceed in

accordance with the following schedule:

a) Plaintiff shall file and serve a response to defendants' motion (including an answering brief and accompanying affidavits, exhibits, etc., if any) on or before **October 31, 2005**.

b) Defendants may file and serve a reply brief on or before **November 15, 2005**.



United States District Judge